

MINUTES OF OCTOBER 1, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 1, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell, Planning and Zoning Director, Mr. Jamie Whitehouse – Planning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously to approve the agenda as amended. Motion carried 5 – 0.

Motion by Mr. Callaway, seconded by Ms. Magee, and carried unanimously to approve the Minutes and Findings of Facts for August 6, 2018. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

OLD BUSINESS

Case No. 12204 – Linda R. Stetvick seeks a special use exception for a garage/studio apartment (Sections 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the southeast side of Cordrey Rd., approximately 432 ft. south of Mount Joy Rd. 911 Address: 30580 Cordrey Rd., Millsboro. Zoning District: AR-1. Tax Parcel: 234-29.00-321.00.

Ms. Cornwell presented the case which had been left open for the limited purpose of allowing staff to research the history of the site. Ms. Cornwell advised the Board that a building permit was issued in 1996 to add the mobile home to the site; that the permit included a notation that there was only to be one kitchen on the Property at the time; that the Office received a complaint which led to the Application; that the notice stated that the Applicant could apply for a conditional use but the Applicant applied for a special use exception; and that the Applicant could seek a conditional use for a multi-family structure.

Mr. Sharp stated that he researched the history of special use exceptions for garages / studio apartments; that this special use exception was created in 2008 as a way to provide additional means for affordable housing and rental income; and that, prior to 2008, there was no such relief in the Code. Mr. Sharp recited the definition of a garage / studio apartment. Mr. Sharp stated that, at the hearing, staff learned that there were 2 kitchens and that the units were attached; that a single-family dwelling was historically defined as a structure designed for use by one family; that family was defined as including a unit with single culinary facilities; that the prior definition regarding single culinary

facilities would have applied in 1996; that the existence of multiple culinary facilities is evidence of a multi-family dwelling; and that the Applicant could seek a conditional use for that type of use.

Ms. Cornwell stated that, if the Application is denied, the Applicant would either have to apply for a conditional use or remove the kitchen appliances from one unit.

Mr. Mears moved to deny Case Number 12204 because the County Code is not applicable to this condition and the violation notice was clear on the violation notice, seconded by Mr. Workman.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously to allow the **deny the Application**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

PUBLIC HEARINGS

Case No. 12205 – Sea Colony Recreational Association, Inc. requests a special use exception to use a manufactured home type structure as an office. (Sections 115-48 & 115-210 of the Sussex County Zoning Code). The property is located on the southwest side of Brighton Ln., approximately 850 ft. south of Westway Dr. 911 Address: N/A. Zoning District: HR-1. Tax Parcel: 134-17.00-48.00 (Part of)

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received three letters in support of and eight letters in opposition to the Application and seventeen mail returns. The Applicant seeks to use a manufactured home type structure as an office. Ms. Cornwell noted that there is another building on the site but is not related to this application.

William Scott was present on behalf of the Applicant, presented the Application and submitted pictures of the property to the Board. Roy Zatkoff and Douglas Bowden were sworn in to give testimony.

Mr. Scott stated that the application is for a special use exception to use a manufactured home as an office; that the Property is located in Sea Colony West; that the structure is located between Phase 8 West and Bahamas Beach Cottages; that this office has been in place for more than twenty-five years; that Mr. Bowden has been working out of this office since it was located on the site; that Mr. Bowden works for Resort Quest and the office is used for an office for the property manager of Sea Colony West; that this office was in place before Bahamas Beach Cottages was built; that there is a maintenance yard also on this site that is used by the landscape company for Sea Colony; that there is no record of a prior application for a special use exception; that there have been no complaints until recently; that there are letters of support from the Bahamas Beach Cottages and from Phase 8

West property owners; and that it will not adversely affect the use of neighboring properties as it was there prior to Bahamas Beach Cottages community.

Mr. Zatkoff and Mr. Bowden affirmed the statements made by Mr. Scott as true and correct.

Mr. Scott stated that the Applicant seeks an approval for five years.

Ms. Cornwell stated that the Planning & Zoning Department received a complaint and then inspected the site; that a significant amount of research led to this application; that all residential structures have permits; that the sheds meet the setback requirements; that the Property is treated as a condominium; that the road shown on the site plan is not a property line; and that no variances are needed.

Mr. Scott stated that the area is gated and is heavily wooded.

Mr. Bowden testified that there is no current plan for a permanent structure to be placed on this property; that there is a holding tank for septic that is cleaned out weekly; that the structure results in minimal traffic and is only used by the property manager; that the unit has 2-3 full-time employees; that there are no noise issues from the unit; that they are on county water; that there are no lighting issues from the unit; and that he is not sure how old the unit is.

Mr. Scott stated that Sposato Landscaping uses the area as well.

David Hughes, Linda Flynn, and Edward Etkins were sworn in to give testimony. All are opposed to the Application and Mr. Hughes submitted pictures to the Board.

Mr. Hughes testified that he lives in Bahamas Beach Cottages and that the letter from Bahamas Beach Cottages was from the president only; and that Sposato uses the site for storage and trashes the site.

Ms. Flynn testified that she saw a pole barn and called Planning & Zoning; that she bought her house 13 years ago; that the site is used as a transportation depot; that a fire truck is stored on the site; that dump trucks go to and from the site and are noisy; that property values decrease due to the use of the site; that she has a right to quiet enjoyment of her property; that the pole building was not on the site when she purchased her lot; and that the unit substantially affects adversely the uses of neighboring and adjacent properties.

Ms. Cornwell advised the Board that the pole building is a different structure on the Property.

Ms. Flynn testified that the pole building is where the fire truck is located.

Mr. Etkins testified that he owned property adjacent to the site prior to the placement of the

manufactured home type structure; that a service road was located at that time; that he watched buildings and a fence being erected; that the Applicant is not a good neighbor; that no one in Sea Colony sees the site but Bahamas Beach Cottages can see it; that Sposato starts at 7 am and is noisy; that he would oppose a permanent structure; that the temporary structure has substantially affected adversely the uses of neighboring and adjacent properties; and that he has lived on his property for 26 years.

Ms. Cornwell advised the Board that office and storage is permitted on the site; and that a maintenance facility is permitted.

Mr. Scott stated that Sposato (or whoever is landscaping for Sea Colony West) has a shed and a right to store materials in the shed.

Mr. Bowden testified that Sposato leaves trailers on the site and rotate between the Sea Colony properties.

The Board found that no parties appeared in support of the Application and seven people appeared in opposition to the Application.

Mr. Mears moved to approve Application No. 12205 for the requested special use exception limited to one (1) year to prepare a permanent plan for the property management office needs as it will not substantially affect adversely the uses of adjacent neighboring properties.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **special use exception be granted for a period of one (1) year.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12206 – Vikki L. Mast seeks a variance from the rear yard setback requirement for a proposed structure (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the southeast corner of Chaplains Chapel Rd. and Deer Forest Rd. 911 Address: 13120 Deer Forest Rd., Bridgeville. Zoning District: AR-1. Tax Parcel: 430-17.00-11.02

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. Mr. Whitehouse stated that request is for a 15 ft. variance from the required 20 ft. required rear yard setback for an accessory structure.

Vikki Mast was sworn in to give testimony. Ms. Mast testified that the property is unique because it is a corner lot and has a unique shape; that a shed will be removed to place a garage and it can only be placed in this location as it is close to the shared driveway; that the need for the variance

was not created by the applicant as there is a septic field in the front of the house; that the variance will not affect neighboring property as the farm is owned by family members; that the neighbors support the application; that the garage will be located where the dog pen is currently located; that this is the minimum variance to allow for the garage; that the garage will measure 32 feet by 56 feet; that there is a well near the dog pen; and that there is a ditch and septic system in the front yard.

The Board found that two people appeared in support of and no one appeared in opposition to the Application.

Mr. Workman moved to approve Variance Application No. 12206 for the requested variance for the following reasons:

1. The uniqueness of the property is that it is an odd shaped lot;
2. The placement of the well and shared driveway would make it difficult to otherwise develop the property;
3. The variance is necessary to enable the use of the property;
4. The variance will not affect the essential character of the neighborhood;
5. The Applicant's family owns nearby properties; and
6. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Workman, seconded by Ms. Magee, and carried unanimously that the **variance be granted for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12207 – William Draine seeks a special use exception to operate a driving range (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest and northeast corners of Hollyville Rd. and Mount Joy Rd. 911 Address: 26050 Hollyville Rd., Millsboro. Zoning District: AR-1. Tax Parcel: 234-21.00-47.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received four letters in support of the Application and none in opposition to the Application and two mail returns. Mr. Whitehouse stated that request is for a renewal for five years for a special use exception to operate a driving range.

William Draine was sworn in to give testimony and he and submitted an exhibit booklet for the Board to review.

Mr. Draine testified that the driving range does not adversely affect the use of neighboring properties; that there are no changes to the driving range; that the range is not open to the public and is only for his private students by appointment only; that the facility is known as the Golf Haven

Driving Range; that only his students have a right to access the facility; that the Board previously granted an approval in 2013; that the facility is only open during daylight hours; that the facility produces no noise or lighting; that he has no plans to expand the facility; that the business will remain the same; that Sussex County owns neighboring property used for spray irrigation; and that there have been no complaints.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Application No. 12207 for the requested special use exception for five (5) years with the condition that the facility will not be expanded because the facility will not substantially affect adversely the uses of adjacent neighboring properties.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **special use exception be granted for five (5) years**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board took a five (5) minute recess.

Case No. 12208 – Catherine A. Hamel seeks variances from the rear yard and side yard setback requirements for an existing structure (Sections 115-25 & 115-185 of the Sussex County Zoning Code). The property is located on the northeast corner of Bald Eagle Rd. and 9th St. 911 Address: 21201 Bald Eagle Rd., Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-19.16-100.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and zero mail returns. The Applicant is seeking a 1.6 ft. variance from the required 5 ft. rear yard setback and a 0.6 ft. variance from the required 5 ft. side yard setback on the north side for an existing shed. Mr. Whitehouse read the letter of support into the record.

Kenneth Beeks was sworn in to give testimony. Mr. Beeks testified that the Property was owned by his now deceased in-laws; that the shed was installed about thirty (30) years ago; that he inherited the Property; that the shed is still operational; that there have been no complaints about the shed; that he sold the Property recently and discovered the encroachments as part of that process; that the variances are requested to retain the shed; that the neighbors do not object to the variance request; and that there is a fence near the shed.

Ms. Cornwell stated that the dwelling is not at issue because a certificate of compliance was issued and the variance needed for the dwelling can go through the administrative variance process.

Mr. Beeks testified that the property is unique because of the shape and it is a corner lot; that

the shed cannot be moved; that the Property cannot be otherwise developed because there are a number of pine trees on the Property; that there is no other place where the shed can be placed; that the shed was placed on the Property by a prior owner; that the need for the variance was not created by the applicant but by the previous owner; that the variances will not alter the character of the neighborhood because the shed is part of the neighborhood; that the variances requested are the minimum variances requested to afford relief; and that the Property was previously served by septic but has since connected to sewer after the shed was built.

Ms. Cornwell confirmed that Bald Eagle Road is the front yard and 9th Street is the corner front yard.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12207 for the requested variances for the following reasons:

1. The uniqueness of the property is the angled shape and it is very wooded;
2. The Property cannot otherwise be developed because it is not possible to move the shed due to trees;
3. The problem was not created by the applicant as the shed has been there for more than thirty (30) years;
4. The variances will not affect the essential character of the neighborhood as it is already existing; and
5. The requested variances are the minimum variances to continue use of the existing structure.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12209 –JKJ Properties, LLC seeks a special use exception for an off-premise sign (Sections 115-80, 115-81, 115-159.5 & 115-210 of the Sussex County Zoning Code). The property is located on the east side of DuPont Blvd. (Rt. 113), approximately 1,482 ft. north of Beach Hwy. (Rt. 16). 911 Address: 12461 DuPont Blvd., Ellendale. Zoning District: C-1. Tax Parcel: 230-26.00-36.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant seeks a special use exception for an off-premise sign.

Mark Davidson, Lynn Rogers, and James Weller were sworn in to give testimony about the Application. Mr. Davidson submitted exhibits to the Board to review.

Mr. Davidson testified that the property is zoned General Commercial (C-1) and consists of 1.79 acres; that the request is for an off-premise electronic message center for Mr. Weller's business; that the existing use of the property is a thrift shop; that DelDOT has issued a letter of no objection to the Application; that the sign will measure 10 feet by 30 feet and will consist of 300 square feet per side; that the sign will be two-sided; that the sign will be half the size of what is allowed by Code; that the sign will be mounted on a two-foot diameter steel monopole; that the sign will be approximately 41 feet from the front property line; that the sign will meet the setback requirements; that a nearby property to the south has a billboard but the requested sign will be 601 feet away from that billboard; that the sign will be a V-style sign; that the sign will be 1,500 feet from the intersection of Route 113 and Route 16; that the sign will be greater than 2,500 feet from the nearest off-premises electronic message center; that there are no dwelling, churches, or public lands within 150 feet of the sign; that the sign will not substantially affect adversely the uses of adjacent or neighboring properties; that the adjacent property is wooded and vacant and that the next property is commercial; that the sign poses no fire or other hazard; that the sign will not affect property values or traffic; that the sign will not be a public nuisance; and that the sign will meet the brightness standards.

James Weller testified that he owns the Property; that he has many business interests in Sussex County; that he will use this messaging center to advertise his businesses located off-site; and that he will not use the sign to advertise on-site businesses.

Mr. Rogers testified that the sign can be programmed to meet the brightness standard; that the sign will not super bright; and that the sign will meet all the requirements in the ordinance.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Special Use Exception Application No. 12209 for the proposed off-premises electronic message center because the sign will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12210 – Archie Strazzella seeks variances from the side yard setback requirements for existing structures (Sections 115-25 & 115-185 of the Sussex County Zoning Code). The property is located on the west side of Oak Rd., approximately 2,589 ft. south of Beach Hwy. (Rt. 16). 911 Address: 12962 Oak Rd., Greenwood. Zoning District: AR-1. Tax Map: 430-10.00-19.00.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is seeking a 3.9 ft. variance from the required 5 ft. side yard setback for an existing shed on the north side and a 7.8 ft. variance from the required 15 ft. side yard setback for an existing garage on the south side.

Archie Strazzella was sworn in to give testimony. Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicant.

Mrs. Burton stated that exhibit booklets had been submitted to the Board; that the only variance required would be for the garage as the shed will be moved to be compliant with the zoning code; that an affidavit in support of the Application from the previous property owner, Joseph Weening, is included in the exhibit booklet; that the Applicant purchased the Property in June 2018; that Mr. Weening purchased the Property in May 2012 and the garage was located on the Property at that time; that the Applicant believes the garage was built in 2000 by a prior owner with a permit; that the garage has not moved since 2000; that Mr. Weening was unaware of the encroachment; that the Property is unique due to the large, irregular shaped lot; that the Property is very deep; that an exceptional practical difficulty exists due to the uniqueness of the Property; that it would not be possible to develop this property otherwise without removing a portion of the garage; that the variance is necessary to enable a reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant or the previous owner as they both purchased this property with the garage existing; that the variance will not alter the character of the neighborhood as it has been there for eighteen years; that the variance will not be detrimental to the public welfare; that neighbors support the Application; that the prior owner received no complaints about the garage; that the sheds are being relocated in compliance with the Sussex County Zoning Code; and that the variance requested is the minimum variance that will afford relief.

Mr. Strazzella affirmed the statements made by Mrs. Burton as true and correct.

Mr. Strazella testified that he loves the garage and that the 50 foot road on adjacent property shifts due to plowing.

Jay Reibsome testified in support of the Application. Jay Reibsome testified that he is not in opposition to the position to the variance request for the garage but had concerns that the access road next to the property line was part of this application; that the road goes to his lots and the farmer plows the road; and that he does not oppose the garage.

Mr. Mills stated that the access road is not part of this application.

The Board found that one person appeared in support of and no one appeared in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12210 as the Applicant has met all the criteria for granting a variance.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12211 – Kelly Hales seeks variances from the front yard setback and side yard setback requirements for existing structures (Sections 115-42, 115-182, & 115-185 of the Sussex County Zoning Code). The property is located on the west side of East Lagoon Rd., approximately 511 ft. north of Falling Point Rd. 911 Address: 30835 & 30843 East Lagoon Rd., Dagsboro. Zoning District: GR. Tax Parcels: 134-6.00-123.00 & 134-6.00-124.00.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and two mail returns. Mr. Whitehouse stated that request is for a 3.6 ft. variance from the 17.6 ft. average front yard setback for the existing dwelling, an 8.1 ft from the 10 ft. required side yard setback on the north side of Lot 10 for the existing guesthouse; a 1.1 ft. variance from the required 5 ft. side yard setback on the north side of Lot 11 for an existing shed.

Kelly Hales was sworn in to give testimony and she submitted exhibits to the Board.

Ms. Hales testified that the Property is in Dogwood Acres; that neighboring homes are located close to the road; that Planning & Zoning approved the proposed location of the home and the location was staked out; that the Property is unique because it is in a flood zone; that the Property has a water pumphouse; that she hired a contractor and the contractor pulled the stakes; that the Property consists of 3 lots measuring 50 feet wide each; that the builder did not place the home in compliance with the stakes; that a temporary certificate of occupancy was issued; that the house was built; that the Property slopes towards the rear yard; that she wants to keep the home where it sits; that the house is parallel to the retaining wall but not the front yard; that she has sued the builder; that it cannot be otherwise developed as the home is already in place; that this was not created by the Applicant but by the builder who placed the home in the wrong location; that the variances will not alter the character of the neighborhood as other homes in the area also sit close to the front of the property; that the septic is located in front of the guest house and the drain field is located where the shed is located; that the only improvement that she has made is placing the house on the lot; and this is the least variance to allow for the home to remain in the current location.

After discussion, a variance 8.6 ft. from the 17.6 ft. average front yard setback for the existing pump house was added to the Application.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Magee moved to table Case No. 12211 until October 15, 2018 meeting.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously to **table this case until the next meeting**. Motion carried 5 – 0.

Meeting was adjourned at 9:24 p.m.